

**Supplemental Letter of Findings: 01-20160393
Indiana Individual Income Tax
For The Tax Years 2011 & 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual did not provide sufficient documentation to establish that he abandoned his Indiana domicile and established a new domicile in Illinois for tax years 2011 and 2012. Therefore, the Department properly assessed Taxpayer Indiana individual income tax and non-filing penalty.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's proposed assessment for the 2011 and 2012 tax years.

II. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-3.

STATEMENT OF FACTS

Taxpayer is an individual currently residing in Indiana. From 2006 through 2013, Taxpayer lived and worked in Illinois but maintained an Indiana residence where his wife and daughter lived. Taxpayer returned to his Indiana residence after he moved back to Indiana from Illinois in 2013. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011 and 2012, and that Taxpayer failed to file his 2011 and 2012 Indiana income tax returns. The Department, therefore, issued proposed assessments for 2011 and 2012 for income tax, penalty and interest.

Taxpayer timely protested the proposed assessment. An administrative hearing was scheduled, but Taxpayer failed to attend. The protest was administratively withdrawn per departmental policy. Taxpayer requested and was granted a rehearing, and an administrative phone hearing was held. This Supplemental Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessments for the tax years 2011 and 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 and 2012 tax years on the grounds that Taxpayer was an Indiana resident and that he failed to file Indiana individual income tax returns. Specifically, the Department determined that Taxpayer was a resident based on the filing of the homestead exemption on his Indiana residence, as well as the maintenance of an Indiana driver's license and vehicle registration. The issue is whether, for the tax years 2011 and 2012, Taxpayer was an Indiana resident and was therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
 - (2) Registering to vote
 - (3) Seeking elective office
 - (4) Filing a resident state income tax return or **complying with the homestead laws of a state**
 - (5) Receiving public assistance
 - (6) Titling and registering a motor vehicle
 - (7) Preparing a new last will and testament which includes the state of domicile.
- (Emphasis added).**

Thus, a new domicile is not necessarily created when an individual moves to a place outside Indiana. Instead, the individual must move to the new non-Indiana place and have intent to remain there indefinitely.

In Croop v. Walton, 157 N.E. 275 (Ind. 1927) , a taxpayer, Mr. Walton, who was domiciled in Michigan, sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. Mr. Walton lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." Id. at 276 . The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, Mr. Walton did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because

his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. at 277 (Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in Croop stated:

"Domicile' is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention. . . . Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.**

Id. at 277-78 (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

A person who leaves his places of residence temporarily, but with the intention of returning, has not lost his original residence. . . .

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

Id. at 1317-18 (Internal citations omitted) (**Emphasis added**).

Taxpayer asserts that he was a resident of Illinois during 2011 and 2012 and therefore not required to file tax returns in Indiana. Taxpayer provided copies of his Illinois income tax returns for 2011 and 2012, and his W-2 form showing his Illinois employer. Taxpayer was provided the opportunity to submit additional information in support of his protest, but failed to do so by the agreed upon deadline.

Significantly, Taxpayer retained ownership of his Indiana residence and continued to take advantage of the Indiana homestead credit on his property taxes. Under Indiana law, "'Homestead' means **an individual's principal place of residence** . . . (A) that is located in Indiana; (B) that: (i) the individual owns" IC § 6-1.1-12-37(a)(2) (**emphasis added**). By claiming the homestead credit, Taxpayer affirmed that his Indiana residence was his principal place of residence, and he availed himself of the property tax advantages by continuing to claim the credit. Claiming the homestead credit, coupled with the facts that Taxpayer's wife and daughter continued to live at the residence, Taxpayer returned to the residence, and that Taxpayer maintained his Indiana driver's license, does not demonstrate an intent to abandon his Indiana domicile during the time he lived in Illinois. While Taxpayer may have established a new residence in Illinois, he did not manifest an intention to establish a new domicile.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). Pursuant to [45 IAC 3.1-1-22](#), Taxpayer has not provided documentation presenting relevant facts that establish that he abandoned his Indiana domicile and established a new domicile out of state. Thus, Taxpayer has failed to meet the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20%) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

In this case, Taxpayer did not file Indiana income tax returns for 2011 and 2012 and the Department had to prepare them for Taxpayer. Therefore, under IC § 6-8.1-10-3(b), Taxpayer was subject to a penalty.

FINDING

Taxpayer's protest of the imposition of penalty is respectfully denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment for the 2011 and 2012 tax years is denied. Taxpayer's protest of the imposition of penalty is denied.

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